



PART 8

Appendix

HOW TO LEARN ABOUT SPECIFIC AGENCIES' PETITIONING PROCEDURES

THE FEDERAL and state constitutions and laws that provide for citizen's petitions frequently do not specify the steps required to file a petition. Those details are left up to the individual agencies. Some agencies have issued specific instructions about what a petition should include, how to file it, and when to expect a decision. Others state only that a petition can be filed.

Before filing a petition, find out whether or not the agency has a specific procedure. If there are no specific requirements, follow the guide provided by our sample petition on pages 79–80.

FEDERAL PROCEDURES

The regulations promulgated by every federal agency can be found in *The Code of Federal Regulations (CFR)*, which is available in any law library and on the Internet. Unfortunately, the CFRs for individual agencies lack their own index. To find the petitioning regulations for a specific agency, you need to look in a separate volume, titled *CFR Index*. All departments and agencies are listed alphabetically. Under each department or

agency listing there is an index of topics. The petitioning process can generally be found under “administrative regulations,” “administrative practices and procedures,” or “rule-making.” The Food and Drug Administration’s (FDA) petitioning regulations, for example, are listed under, “administrative practices and procedures,” while the Occupational Safety and Health Administration’s (OSHA) petitioning regulations are listed under “Rules of procedure for promulgating, modifying, or revoking occupational safety or health standards.”


The procedure for filing a complaint or a request for enforcement may differ from the procedure for filing a petition. Keywords to check for are: “complaint procedures” and “enforcement.”

As with any type of research, **be creative with keywords** and make sure you look through the whole index for the relevant agency.

What do all the numbers mean?

So now that you've found the cite for the regulation in the index, how do you find the regulation? For example, the cite for the Food and Drug Administration's petitioning regulations refers you to 21 CFR 10. The 21 CFR means volume number 21 of *The Code of Federal Regulations*; the 10 refers to the part

of the volume where the subject can be found. On the binder of every CFR volume is the volume number and the parts in that volume. So in this case you would look for volume 21, parts 1 to 99. When you turn to part 10, you'll find a subindex, which will refer you to the specific section. This subindex for the FDA lists "citizen petition" under 10.30, so you then simply look for §10.30.

 **Research shortcut:** If you have the phone number for the agency, call its general counsel's office (the agency's attorneys) and ask if the agency has a petitioning procedure. The phone number and Web site for every department and agency are listed in the *U.S. Government Manual* published by the General Printing Office. This manual should be avail-

able in the reference section of any library and is on the Web at www.access.gpo.gov/nara/nara001.html. Another excellent reference is the *Federal Yellow Book*, which lists phone numbers, e-mail addresses, and Web sites.

Important: When you file your petition, cite the petitioning law, regulation, or constitutional provision that gives you the authority to file the petition. For example, if you are petitioning the FDA, make sure you state in the petition that it is being filed pursuant to 21 CFR 10.30. If the agency you are concerned about does not have a specific regulation, then cite the Administrative Procedures Act: "This petition is being filed pursuant to the Administrative Procedures Act (5 USCS § 553 (e))."

21 CFR 10.30

§ 10.30 Citizen petition.

(a) This section applies to any petition submitted by a person (including a person who is not a citizen of the United States) except to the extent that other sections of this chapter apply different requirements to a particular matter.

(b) A petition (including any attachments) must be submitted in accordance with § 10.20 and in the following form:
(Date)

Dockets Management Branch,
Food and Drug Administration,
Department of Health and
Human Services, rm. 1-23,
12420 Parklawn Dr.,
Rockville, MD 20857.

Citizen petition

The undersigned submits this petition under ___ (relevant

statutory sections, if known) of the ___ (Federal Food, Drug, and Cosmetic Act, or the Public Health Service Act, or any other statutory provision for which authority has been delegated to the Commissioner of Food and Drugs under 21 CFR 5.10) to request the Commissioner of Food and Drugs to ___ (issue, amend, or revoke a regulation or order, or take or refrain from taking any other form of administrative action).

A. Action requested

((1) If the petition requests the commissioner to issue, amend, or revoke a regulation, use the exact wording of the existing regulation (if any) and of the proposed regulation or amendment requested.)

((2) If the petition requests the commissioner to issue, amend,

or revoke an order, copy the exact wording of the citation to the existing order (if any) and the exact wording requested for the proposed order.)

((3) If the petition requests the commissioner to take or refrain from taking any other form of administrative action, cite the specific action or relief requested.)

B. Statement of grounds

(A full statement, in a well-organized format, of the factual and legal grounds on which the petitioner relies, including all relevant information and views on which the petitioner relies, as well as representative information known to the petitioner that is unfavorable to the petitioner's position.)

STATE PROCEDURES

The current state petitioning laws are listed on pages 85–87. However, states often amend their annotated codes, so it is important to check the state law before proceeding.

In general, state laws can be found in a state’s revised *Code of Statutes*. Most states have administrative procedure laws that set general guidelines about how to petition a state agency—generally referred to as “requesting the promulgation (or adoption), repeal, or amendment of a rule.” Start by looking up certain keywords in the state’s *Annotated Code Index*. Useful search words for petitioning statutes include: “Petition,” “Administrative Procedure,” and “Rules and Regulations.” States that have specific Administrative Procedure laws will often have a subheading for “Petition” under the more general guidelines of “Administrative Procedure.” In states that have only constitutional guarantees, you are more likely to find the provision under the keyword “Petition.”

Example: California

If you look up “Administrative Procedure” in the *California Annotated Code Index*, you will find several subheadings, one of which is “Petitions.” Petitions has four subheadings. One of these subheadings is “Adoption, Amendment, or Repeal.” This is what you’re looking for. The index points you to Gov. 11340.6 and 11340.7.

What do those numbers mean? Gov. is the prefix that indicates that the law is in the *Government Code*. Each prefix denotes specific sections of a state’s code. Many states only use “Rev.,” which stands for Revised Code. Others use “Gen.,” which stands for General Statutes. Big states, like California, which has a large body of state law, divide their law into sections. For example, “Const.” stands for Constitution; “Gov.” stands for the Government Code; and “Veh.” stands for the Vehicle Code.

The number that follows the prefix stands for the particular section of the code. Sections are always in numerical order, hence 11340.7 will follow 11340.6. Our particular citation tells us that we should find the statute that deals with petitioning and administrative procedure in *California Government Code*, Sections 11340.6 and 11340.7.

Research Tip

Don’t forget to check the pocket part.

If you cannot find the specific citation in the codebook, look in the pocket part, which is inserted in the back of each code book. The pocket part contains the most recent amendments, repeals, and revisions to state laws. Even if you find the statute in the code book, it is **critical to check the pocket part** to see if the statute has been revised.

How do I find whether there are different guidelines for each specific agency within a state?

To find out whether a state agency has special guidelines for petitioning, check the state agency’s index in the *Annotated Code Index*. Use the same keywords (Petition, Administrative Procedure, Regulation) that you used for the general search. Follow the same process you used in the original search to find if there was an applicable regulation for a specific agency. Don’t worry if you can’t find one. Many state agencies, just like federal agencies, lack specific procedures. The fastest way to find an agency’s procedures is to call its **general counsel’s office**.

Research Shortcut

The phone number for each state agency can be found in the *State Yellow Book*, which is available at many public libraries.

Internet research: Another research tool is the Web. Most states have home pages that can be reached using the two-letter postal abbreviation. For example, the home page for Alaska is www.state.ak.us, while the home page for Wyoming is www.state.wy.us.

Although they vary in breadth, sophistication, and user friendliness, a state's Web pages can be useful as a starting point. Many states' home pages have Keyword Search mechanisms. To find a state's petitioning statute, punch in the same keywords you used in your General Index Search. When searching the Web, it is best to use combinations of words to narrow your search, separating them with a conjunction, such as "and." For example, if you are searching the Internet for the petitioning statute in the *Nebraska Revised Statutes*, you would use "petition and administrative and procedure" to make sure that your search request includes all your keywords and not just one or two of them.

Important: Don't forget, when you file your petition, to cite the petitioning statute, regulation, or constitutional provision that gives you the authority to file the petition. For example, in California, make sure you state in the petition that it is being filed pursuant to Gov. Code § 11340.6 et. seq. (from the Latin *et sequentes*, et seq. means "and the following sections").

GOVERNMENT AGENCIES

This section provides additional information about government agencies. It briefly describes how these agencies affect food, housing, medical care, and other critical areas.

There are basically three types of government agencies: regulatory, service, and support.

Regulatory agencies have the power to determine what shall or shall not be done in particular situations. These agencies may also have the power to take legal action, impose fines, or take other punitive action against violators.

Service agencies devote themselves primarily to delivering essential services to the community. For example, state transportation

departments are responsible for the construction and maintenance of state highway systems; state welfare programs provide financial, medical, and other forms of assistance to poor, disabled, and elderly persons.

Finally, support agencies exist primarily to serve the rest of state government. These agencies may perform housekeeping functions such as the management and maintenance of state property, personnel matters, and the purchase of supplies. They may also conduct research and provide state government with economic, financial, budgetary, and demographic information.

Within each state, there are dozens of administrative agencies, each with particular missions to perform. The following sections briefly describe how state administrative agencies are involved in certain critical areas.

Note: The names and specific powers of these agencies vary from state to state.

Food quality

The quality, cost, and availability of food are matters of critical concern to all members of the public. As food and food products make their way from the farm to the family table, they come under the control of a number of state agencies. Generally, the most important agencies are the Departments of Agriculture and Health.

In many states, the Department of Agriculture is one of the oldest agencies in state government. It oversees food production and is responsible for protecting the quality and availability of food. The department's activities may include: conducting programs to protect livestock and poultry against disease, controlling the use of pesticides and agricultural chemicals, setting minimum milk prices and regulating the processing and handling of milk. In addition, through marketing order boards, Agriculture Departments conduct research, advertise agricultural products, and set grading and packing standards for various farm products.

State Departments of Health regulate other

aspects of the food industry. These departments may have the authority to confiscate or embargo adulterated, misbranded, or falsely advertised food products. They may also monitor the effectiveness of local health agencies in enforcing retail food laws and regulations.

At the federal level, the counterparts to state Agriculture and Health Departments are the U.S. Department of Agriculture (USDA) and the Food and Drug Administration (FDA).

Health care

In many states, responsibility for health care services is shared by a number of agencies. In each state, there are a number of boards or bureaus that are responsible for licensing and supervising health care professionals. Typically, these agencies administer examinations, develop rules for the profession, and discipline those who violate the rules. There is usually one board or bureau for each major professional group, e.g., the Board of Dental Examiners (for dentists), the Board of Pharmacy (for pharmacists), etc.

The state may also provide a number of health services directly to the public. It may conduct treatment programs for persons who are mentally ill or developmentally disabled. It may conduct programs for the prevention, treatment, and rehabilitation of alcoholism and drug abuse. The state may also provide subsidies to low-income persons for medical services. These programs may be administered by a number of separate agencies or by a single agency.

The counterparts at the federal level are various agencies under the Department of Health, Education, and Welfare (HEW).

Housing

Over the past decade, sharp increases in the cost of housing have made it extremely difficult for many people to obtain decent, safe, and sanitary housing. For those living on low or fixed incomes, the housing problem is particularly acute.

In response to this problem, some states

have created Housing Finance Agencies, whose purpose is to encourage the construction of housing for low- and middle-income persons. These agencies may accomplish this purpose by providing low-interest loans to qualified developers, or by facilitating federal grant applications by local governments.

Most states also have an agency that is responsible for establishing minimum standards for all types of housing in the state.

The counterpart at the federal level is the Department of Housing and Urban Development (HUD).

Utilities and energy

Since the 1974 energy crisis, there has been increasing public concern about the cost and availability of energy in the United States. Generally, state utilities commissions are responsible for overseeing the firms that provide natural gas and electricity to the public. These commissions also oversee telephone and water services, as well as intrastate trucking, and bus and airline operations. Among their most important functions is setting the rates these firms can charge consumers. (Although state utilities commissions are often exempt from the administrative petitioning process, they may provide an analogous "complaint" procedure.)

In some states, the energy crisis prompted the creation of a new administrative agency responsible for developing conservation measures and conducting research into the state's energy needs. The new energy agencies may also have the authority to approve or disapprove sites for new power plants.

The counterparts at the federal level are: Department of Energy (DOE), with primary responsibility for energy regulation and development; Federal Communications Commission (FCC), for interstate communications; Interstate Commerce Commission (ICC), for interstate transportation; Civil Aeronautics Board (CAB); and Federal Aviation Administration (FAA), for air transportation.

Education

Public education is a major commitment for most states, consuming as much as 25% of the total state budget. Responsibility for elementary and secondary education is shared between state and local agencies. The State Board, or Department, of Education is responsible for developing broad policy guidelines, which are refined and implemented at the local level.

Higher education is usually the responsibility of state universities, colleges, and junior colleges. Generally, each of these systems is governed by a board of trustees.

On the federal level, education programs are administered by the Department of Health, Education, and Welfare (HEW).

Natural resources

State administrative agencies play an important role in protecting our air, water, forests, wildlife, and other natural resources. The oldest resource agencies are typically the Forestry, Parks, and Fish and Game Departments. In addition, some states have special lands commissions, which are responsible for managing and developing all resources on state-owned lands.

The counterparts at the federal level are the Environmental Protection Agency (EPA); U.S. Department of Agriculture (USDA), which oversees national forests; and the Department of Interior, responsible for wildlife, national parks, and mineral and other resources.

Jobs

Several state administrative agencies are responsible for protecting the interests of working men and women. In recent years, states have created fair-employment agencies that are responsible for enforcing equal employment laws. To this end, these agencies usually receive and investigate complaints of discriminatory practices and generally have the power to hold hearings, issue rulings, and to obtain court orders to enforce their decisions.

As more is learned about the hazards of various industrial materials and processes, there is increasing concern about the safety of workers and other persons on the job site. Departments of Industrial Relations are responsible for protecting the health and safety of workers. Typically, these departments set standards for industries to follow and enforce these standards through a program of on-site inspections and penalties for violations.

When a worker is injured or laid off, another state agency usually takes over. In most states, injured or unemployed workers who meet certain minimum qualifications are entitled to draw certain benefits. In addition to administering these programs, state labor or employment departments may also assist workers in securing rehabilitation services and/or employment opportunities.

The counterparts at the federal level are: Department of Labor (DOL), Occupational Safety and Health Administration (OSHA), Equal Employment Opportunity Commission (EEOC), and the National Labor Relations Board (NLRB).

Welfare

Providing financial assistance to low-income persons is a responsibility shared by federal, state, and local governments. State Departments of Social Services are usually responsible for overseeing state and local welfare programs. These programs work in conjunction with federally administered programs such as Food Stamps and Aid to the Aged, Blind, and Disabled.

The counterparts at the federal level are: Social Security Administration (Temporary Aid for Needy Families, Supplemental Security Income); U.S. Department of Agriculture (Food Stamps); Administration on Aging (National Nutrition Program for the Elderly); and Office of Child Development (Head Start).

Consumer protection

Many states have assumed an active role in protecting consumers from deceptive business practices and from dangerous or unreliable products and services. Generally, the State Attorney General's Office and/or Department of Consumer Affairs has broad authority for protecting the interests of consumers. The attorney general, for instance, can prosecute firms for violations of state consumer protection laws, while the Department of Consumer Affairs polices advertising practices and conducts consumer education programs.

Most states also have a number of agencies that oversee certain businesses. Typically, one or more state agencies will supervise financial institutions such as banks, savings and loans, and insurance companies. These agencies are responsible for ensuring that these businesses operate in a fair and financially sound manner.

Other state agencies, known as occupational licensing boards, are responsible for overseeing various trades and professions—e.g., accountants, automobile mechanics, funeral directors, building contractors, dry cleaners, real estate sales agents, etc. The theory behind occupational licensing is that certain professions are so sensitive that their practitioners should be licensed by the state and should be made to conform to explicit standards of conduct. Persons who desire to practice in these areas are required to attain a minimum level of competency and are subject to discipline for incompetent, negligent, or other conduct detrimental to the consuming public.

The federal agencies with primary responsibility in the area of consumer protection are: Department of Justice (DOJ); Federal Trade Commission (FTC); Consumer Product Safety Commission (CPSC); Food and Drug Administration (FDA); and National Highway Traffic Safety Administration (NHTSA).

TOOLS FOR PUBLIC ACCESS

This section provides information about the public's right to obtain information from government agencies and to participate in agencies' processes by means other than petitioning. (For Agencies' Processes see page 11.)

Petitioning is but one way to gain access to an administrative agency. In addition, there are a number of procedures that complement the petitioning process. Some of these procedures, such as securing information through the Freedom of Information Act, give the public access to government information. Other procedures help to facilitate actual participation in an agency's decision making.

The Freedom of information Act

The Freedom of Information Act (FOIA), 5 USC § 552, gives the public the right to information that is in the hands of the federal government. Under this law, any person may request that a federal agency make its records available to him or her. Officials of the agency are required to respond to such requests according to a strict timetable. The law states that officials must determine within 20 working days whether to comply with the request and immediately notify the person seeking the information.

An agency's officials may avoid disclosing requested information only if the information falls within one of nine exempt categories. These categories are:

- (1) national defense or foreign policy matters that are specifically classified by executive order;
- (2) internal personnel rules and practices of an agency;
- (3) matters specifically exempt from disclosure by other laws—e.g., social security and tax files;
- (4) trade secrets and confidential commercial

- or financial information obtained from any person;
- (5) interagency or intraagency memos or letters;
 - (6) personnel, medical, or other files that, if disclosed, would clearly be an unwarranted invasion of personal privacy;
 - (7) investigatory files compiled for law enforcement purposes;
 - (8) examination, operating, or condition reports;
 - (9) geological or geophysical information concerning wells.

The following procedure should be used to secure government records under the Freedom of Information Act:

- (1) Submit a letter of request to the agency that describes the information you are seeking and conforms to the agency's published rules. Although the letter should be clear in describing the information, an agency cannot deny a request on some technical mistake in identification.
- (2) The agency's officials must make a decision on your request within 20 working days. Some agencies allow certain requests to receive faster processing under a multitrack system, so you should check the agency's regulations to see if your request is eligible.
- (3) If the agency denies your request, there is generally an appeal process within the agency. The agency must respond to an appeal within 20 working days.
- (4) If the appeal is denied, you may sue the agency in Federal District Court, where FOIA cases must be given priority in scheduling.
- (5) In court, the agency must prove that the information you requested falls into an exempt category. The judge may inspect the records to decide if the information is indeed exempt.

- (6) If the judge finds that the information is not exempt, he or she will order the agency to release the information. If a record contains both exempt and nonexempt information, the judge may order the release of only the nonexempt information.
- (7) The judge has the power to order the agency to pay you your attorney's fees if you prevail.

The Department of Justice lists the principal FOIA contacts at each federal agency on its Web site, www.usdoj.gov/04foia/foiacontacts.htm. You can also call the DOJ's Office of Information and Privacy, where advisors are available to respond to FOIA-related inquiries, at (202) 514-3642 (514-FOIA).

The Federal Privacy Act

The Federal Privacy Act provides a series of safeguards against the misuse of personal information by the federal government. The law requires every federal agency to reveal the existence and characteristics of all personal information systems it maintains. If an agency has information about a person, that person is entitled, in most instances, to inspect and correct the information.

The law also controls the transfer of personal information by federal agencies. Agencies are required to account for all transfers and make the accountings available to individuals.

The federal Government in the Sunshine Act

The Government in the Sunshine Act requires most federal agencies to open their meetings to the public. The law requires agencies' officials to give the public adequate notice of their meetings and permit interested persons to attend.

Any person may challenge the closing of an agency's meeting or any other violation of the Sunshine Act by filing a lawsuit against the

agency. In such a case, the agency must prove that the meeting in question fell under an exempt category provided for by the Sunshine Act. These categories roughly approximate those of the Freedom of Information Act.

State and local agencies' records

The Freedom of Information Act, Federal Privacy Act, and Sunshine Act apply only to federal agencies. However, many states have enacted laws that give the public similar access to state agencies. State Public Records Acts permit the public to secure information held by state and local agencies. Like the FOIA, the state laws require that requested information must be disclosed unless it falls within an exempt category.

State privacy laws permit the inspection and correction of personal records in the hands of state agencies. State Open Meetings Acts require, with some exceptions, that meetings of state and local agencies be open to the public.

Intervention in agency proceedings

Agencies often initiate regulatory proceedings that have far-reaching effects. Intervention is the process by which interested persons and groups may inject themselves into the proceedings and participate as full parties. For example, if a state utility commission commences a proceeding to consider an increase in gas and electric rates, a group of utility consumers might intervene in the proceedings.

The courts have recognized the right of interested persons to intervene in agency proceedings. Although an agency's officials may determine how consumer or community representatives are to participate in its proceedings, they cannot completely exclude these persons. In light of these decisions, some state agencies have established procedures that specifically provide for public intervention.

Public members on state boards and bureaus

State occupational licensing boards have been the target of extreme criticism in many states. Consumers, minority groups, and some industry members believe that these boards often act to protect the interests of the regulated professions, rather than those of the public at large. Of particular concern are licensing standards that lessen competition by keeping competent persons out of the profession and the failure of the boards to take disciplinary action against members of the profession who are incompetent or otherwise unfit to practice.

The composition of the boards has been perceived as a major reason for the problems. Until recently, state licensing boards were made up almost exclusively of industry practitioners. Persons who make their living from the activity they are responsible for regulating are likely to put their interests ahead of those of the consuming public. These persons may be hesitant about disciplining a fellow member of the profession. They may have personal or professional contacts with the person being disciplined and also wish to avoid setting a precedent under which they themselves may someday be punished.

Recognizing this problem, several states have passed laws requiring a number of "public" members on most occupational licensing boards. California, for example, requires a majority of public members on all its boards except the Board of Accountancy and the health care boards; even here, one-third of the board must be public members. These board members have a special responsibility in that they are appointed to protect and represent the interests of the public at large.

Although legislation requiring public board members is highly important, it is clearly not a substitute for other forms of public participation. Ideally, there should be ongoing contact between public board members and the public they are appointed to represent. The

contact may be through informal communication or formal petitions and intervention. This ongoing contact can magnify the effectiveness of both the public and the public board members in influencing governmental decisions.

Funding for public participation

Cost, in many instances, remains the major barrier to full public participation. The expense of conducting research, preparing documents, or serving as a public board member can prevent many persons and groups from participating to the degree they would otherwise.

Recognizing the value and necessity of public participation, the federal government, in the early '70s, took some significant steps to provide financial assistance to persons and groups interested in participating in federal rulemaking proceedings. The Federal Trade Commission, Environmental Protection Agency, Department of Agriculture, and Food and Drug Administration are but some of the agencies that began funding public participation. The FTC, for instance, provided funds for attorneys, experts, studies, surveys, and travel and administrative costs. (For more

information on the FTC's reimbursement program, consult *A Consumer's Guide to the Federal Trade Commission*, Washington, D.C.: Paul H. Douglas Consumer Research Center, 1977, pages 23–26, 38–44.) Unfortunately, these programs have languished for lack of funding. The FDA's program for consumer representation on the agency's advisory panels was also started in the '70s. Fortunately, this program has been continued and has resulted in a more inclusive decision-making process for the FDA.

As mentioned above, in a few states, some agencies provide funding for the participation of public interest groups in agency proceedings. In general, intervenor programs are intended to fund persons or groups whose participation will contribute to a full and fair determination of the issues involved in the proceeding, and who would be unable to participate without program funds. When there is an intervenor program in place, the agency will reimburse a person or group that makes a "substantial contribution" to the agency's decision-making process. Check to see if the agency you intend to petition has a program that could fund the petition-related work of your organization.

MOTOR VOTERS

P.O. BOX 3163
FALLS CHURCH, VA 22043
(703) 448-0002

May 26, 1987

Ms. Diane Steed, Administrator
National Highway Traffic Safety Administration
Room 5220, 400 Seventh Street, S.W.
Washington, D.C. 20590

PETITION

Dear Ms. Steed:

Motor Voters hereby petitions the National Highway Traffic Safety Administration to require passenger vehicle manufacturers to include information about NHTSA in owners' manuals, beginning with the 1988 model year.

We suggest the following language: "If your car has a safety defect, notify the National Highway Traffic Safety Administration (NHTSA). You may either call 800-424-9393 (366-0123 in Washington, D.C.) or write Auto Safety Hotline, NHTSA, 400 Seventh St., Washington, D.C. 20590. NHTSA has the authority to investigate safety defects, and may order a recall. It does not provide direct assistance to individual consumers."


Including a notice about NHTSA in owners' manuals is a cost-beneficial approach to improving consumer reporting of safety defects. Because such notice is uniform and brief, the burden it imposes upon manufacturers is minimal.

While we recognize that not all consumers consult their owners' manual, many others do, particularly when they are experiencing problems with the product. Manufacturers, state and local government agencies and private consumer groups already refer consumers to their owners' manuals for information about their rights and steps for complaint resolution.

In order to fulfill its mandate, NHTSA relies upon consumers to report defects. Providing notice in owners' manuals will help alleviate the somewhat haphazard nature of current defect reporting. By encouraging more consistent reporting, such notice will improve NHTSA's ability to identify safety defects sooner, and will provide a wider data base, independent of media coverage.

We urge you to expeditiously grant our petition.

Sincerely,


Rosemary Dunlap
President



University of San Diego

Center for Public Interest Law

Robert C. Fellmeth, Director

September 14, 1994

Ms. Sherry Mehl
Acupuncture Committee
1424 Howe Avenue, Suite 37
Sacramento, CA 95825-3233

Dear Ms. Mehl:

Pursuant to the California Public Records Act, Government Code section 6250 et seq., the Center for Public Interest Law (hereinafter "Center") hereby requests copies of the following documents:

1. Copies of documents distributed to Committee members regarding the Status of 1994, 1995 and Ongoing Examinations (Item 11 on May 25, 1994 meeting agenda).
2. Copy of documents distributed to Committee members regarding Update on Enforcement and License Status Report (Item 13 on May 25, 1994 meeting agenda).
3. Copies of documents distributed to Committee members regarding the Discussion of Special Consultants for Enforcement Issues (Item 14 on May 25, 1994 meeting agenda).
4. Copy of the 15-day notice of modification to proposed section 1399.489 regarding Continuing Education and Fees (Item 1 on June 29, 1994 meeting agenda).
5. Copy of the August 16-17, 1994 Committee meeting minutes.
6. Copies of all documents distributed to Committee members regarding the 1994 Examination Update Status of "Request for Proposal" (RFP) for 1995 Exam and Occupational Analysis; Discussion Regarding "Special Accommodations" (Item 9a on August 17, 1994 meeting agenda).
7. Copy of the DCA legal opinion regarding Acupuncture Treatment by Dentists and Podiatrists (Item 9c on August 17, 1994 meeting agenda).

5998 Alcalá Park, San Diego, California 92110-2492 619/260-4806
926 J Street, Suite 709, Sacramento, California 95814 916/444-3875

Reply to: ☐ San Diego Office • ☐ Sacramento Office

Ms. Sherry Mehl
September 14, 1994
Page Two

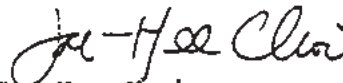
8. Copies of all documents regarding the Division of Investigation Transfer and regarding the Toll-Free Number and Language Capabilities (Item 9d on August 17, 1994 meeting agenda).

In accordance with Section 6257, the Center is willing and able to pay for reasonable copying costs not waived by the Committee.

In addition, we request that you place the Center for Public Interest Law on your list of people who receive full agenda packets prior to each Committee meeting. CPIL used to be on your list and we received the packets when the Committee members received them. This procedure appears easier than a quarterly Public Records Act request and response.

Consistent with section 6256, we expect to hear from you within ten days. If you have any questions concerning the scope of our Public Records Act request, please contact Julie D'Angelo or Jae-Hee Choi at (619) 260-4806.

Sincerely,



Jae-Hee Choi
Student Intern



1750 OCEAN PARK BOULEVARD, #200, SANTA MONICA, CA 90405-4938
 TEL: 310-392-0522 • FAX: 310-392-8874 • NET: CONSUMERWATCHDOG.ORG

January 14, 2001

Media Advisory

Contact: Doug Heller (310) 392-0522 ext. 309

Consumer Group Introduces the Quack-o-Meter

Daily Updates Will Track Insurance Industry's Attempt to Corrupt the Office of the Insurance Commissioner

The Foundation for Taxpayer and Consumer Rights (FTCR) will unveil the Quack-o-Meter, a visual measurement of insurance industry campaign contributions to candidates for California Insurance Commissioner at a Monday morning news conference in the Capitol.

FTCR Executive Director Jamie Court will also discuss potential conflicts of interest in the race for Insurance Commissioner. Former Commissioner Quackenbush resigned after a series of exposes revealed the corruptive influence of insurance industry contributors to Quackenbush's political funds. During his first campaign for Insurance Commissioner in 1994, Chuck Quackenbush raised \$2.5 million from the insurance industry during the primary and general election combined.

FTCR will update contributions to the candidates on a daily basis or as they are reported to the Secretary of State, and fax the Quack-o-Meter to the news media as well as make it available to subscribers to FTCR information bulletins. The more insurance company money received by a candidate, the more he will look like Quackenbush on the Quack-o-Meter. To date, the only candidate to raise industry money, Tom Calderon, has raised \$799,324 from insurance industry sources.

WHAT: News Conference to unveil the Quack-o-Meter

WHO: Jamie Court, Executive Director, Foundation for Taxpayer and Consumer Rights

WHEN: 10:00 am Monday, January 14, 2001

WHERE: Capitol Rotunda, Main Floor
 State Capitol

VISUAL: Blown-up version of the QUACK-O-METER

Type in name of responding agency

(Type in names of)	ADMINISTRATIVE PETITION
petitioners))	TO (Insert descriptive
_____ ,)	_____
)	title)
)	_____
)	
Petitioners.)	
_____)	

INTRODUCTION

Petitioners, _____ (Insert names of petitioners)

_____, request that the _____ (Insert name of petitioned agency)

_____ take immediate and effective action to

(Briefly describe the purpose of the petition — i.e., “To end the industry-wide

fixing of real estate brokers’ commissions.”)

Presently, _____ (Summarize current state of affairs)

These actions are hurting _____ (Briefly describe who is being hurt by the current

state of affairs and how)

The _____ (Insert name of petitioned agency) is under a legal duty to

(Briefly summarize the agency’s responsibility, eg., “Oversee and control the

activities of the real estate industry.”)

Petitioners request that the agency fulfill this responsibility by taking the following

actions:

- 1) _____ (List corrective actions requested)
- 2) _____
- 3) _____

STATEMENT OF FACTS

_____ (Explain the current situation in greater detail. For an example of

a detailed explanation, see page 37.)

PETITIONERS

(Insert name of petitioner) _____, is a nonprofit organization that is dedicated to (Describe the purpose of the organization) _____.

To this end, (Petitioner's name) _____ is active in (Describe the organization's activities) _____.

(OR) (Insert name of petitioner) _____ is a citizen of the state of _____.

She is directly affected by the current state of affairs because (Describe how the petitioner is affected) _____.

AUTHORITY

The right to petition state agencies is contained in (Insert the code and section number of state petitioning law, e.g., "Government code Section 11426, et seq.") _____, which provides that any interested person may petition a state agency requesting the adoption, amendment, or repeal of a rule or regulation.

The agency's authority to take the actions requested in this petition derives from (Insert the statute, court decision, or other appropriate legal authority), which gives the agency the power to (Quote or summarize relevant portions of the statute or decision) _____.

(Insert additional authority, if any) _____ further provides that the agency (shall or may) (Quote or summarize relevant portions of the statute or decision) _____.

RELIEF REQUESTED

Petitioners request that the (Insert the agency's name) _____ take the following actions:

- 1) (List corrective actions requested) _____
- 2) _____
- 3) _____

CONCLUSION

In view of the seriousness of the present problem, petitioners urge that the (Insert the agency's name) _____ immediately take the actions set forth in this petition.

DATED: (Insert date of filing) _____ .

Respectfully submitted,
(Insert petitioner's name, if an individual, or petitioner's representative, if an organization)

By: (Signature) _____

Petitioner

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Pew Charitable Trust
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US Blue Pages, "Your online guide to the US Government":
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E-The People
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Almost every senator and congressman has a Web site and/or an e-mail address:

Senate: <http://www.senate.gov>; a complete list of contacts can be found here:
<http://www.senate.gov/contacting/index.cfm>

Senate committee links:
<http://www.senate.gov/committees/index.cfm>

House of Representatives:
<http://www.house.gov>

Links to individual representative's sites:

<http://www.house.gov/house/MemberWWW.html>

The House committee links can be found here (and most committees have e-mail capabilities):
<http://www.house.gov/house/CommitteeWWW.html>

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<http://www.whitehouse.gov/contact>
<http://www.firstgov.gov/>
<http://www.governmentguide.com/main.adp>

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30 Winter Street, 10th Floor
Boston, MA 02108
Phone: (617) 338-6035
www.communitycatalyst.org

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National Association of State Utility Consumer Advocates
 8300 Colesville Road, Suite 101,
 Silver Spring, MD 20910
 Phone: (301) 589-6313
 Fax: (301) 589-6380
 e-mail: nasuca@nasuca.org.

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 Phone: (202) 898-2200
 Fax: (202) 898-2213
www.naruc.org.

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 77 Summer Street, 10th Floor
 Boston, MA 02110-1006;
 Phone: (617) 542-8010;
 Fax: (617) 542-8028
www.consumerlaw.org.

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MODEL PETITIONING LAW**Section 1.** Petition; right to petition; contents

Any interested person may petition a state agency requesting the adoption, amendment, or repeal of a regulation or other action. Such petition shall state clearly and concisely:

- (a) the substance or nature of the regulation, amendment, repeal, or other action requested;
- (b) the reason for the request;
- (c) reference to the authority of the state agency to take the action(s) requested.

Section 2. Agency's duty to respond to petitions

- (a) Upon receipt of a petition under Section 1, a state agency shall notify the petitioner in writing that it has received the petition and then shall within 30 days:

- i) schedule the matter for hearing as prescribed in this article; or
 - ii) deny the petition in writing, stating why the agency has reached such a decision on the merits of the petition.
- (b) A state agency may grant or deny such petition in part, and may grant such other relief or take such other action as it may determine to be warranted by the petition and shall notify the petitioner in writing of such action and the reasons therefor.
 - (c) A petitioner may compel an agency to respond to his or her petition as required in this section by bringing an action in the Superior Court. A petitioner who prevails in such an action shall be entitled to recover attorney's fees and other costs.

STATE PETITIONING LAWS

State	Agency Required to Respond Within	Check with Agency for Procedure	Legal Reference
Alabama	60 days		Alabama Code § 41-22-8 (rulemaking) Constitution — Art. I, §25 (general)
Alaska	30 days		Alaska Statutes §§ 44.62.220, 44.62.230 (rulemaking) Constitution — Art. I, § 6 (general)
Arizona	60 days		Arizona Revised Statutes § 41-1033 (rulemaking) Constitution Art. II, § 5 (general)
Arkansas			Constitution — Art. II, § 4 (general); (there are also references to petitions for specific purposes in a variety of contexts throughout the code and regulations)
California	30 days		California Government Code §§ 11340.6, 11340.7 (rulemaking); Constitution — Art. I, § 3 (general)
Colorado	Within the agency's discretion, but "when an agency undertakes rulemaking on any matter, all related petitions...shall be considered and acted upon in the same proceeding."	✓	Colorado Revised Statutes 24-4-103(7) (rulemaking) Constitution — Art. II, § 24 (general)
Connecticut	30 days		Connecticut General Statutes 4-174 (rulemaking) Constitution Art. I, § 14 (general)
Delaware	next regular meeting		Delaware Code Title 29, § 10114 (rulemaking) Constitution — Art. I, § 16 (general)
District of Columbia	"...each independent agency shall prescribe by rule the form of such petitions, and the procedure for their submission, consideration, and disposition."	✓	District of Columbia Code § 2-505(b) (rulemaking)
Florida	30 days		Florida Statutes ch. 120.54(7) (rulemaking) Constitution — Art. I, § 5 (general)
Georgia	30 days		Georgia Code § 50-13-9 (rulemaking) Constitution — Sec. 1, para. IX (general)
Hawaii	30 days		Hawaii Revised Statutes § 91-6 (rulemaking) Constitution — Art. I, § 4 (general)
Idaho	28 days		Idaho Code § 67-5230 (rulemaking) Constitution — Art. I, § 10 (general)
Illinois	If rulemaking is not initiated within 30 days, then request is deemed to have been denied.	✓	Illinois Revised Statutes ch. 5, para. 100/5-145(b) (rulemaking) Constitution — Art. I, § 5 (general)
Indiana			Constitution — Art. I, §31 (right to petition the General Assembly)
Iowa	60 days		Iowa Code § 17A.7 (rulemaking) Constitution — Art. I, § 20 (general)

State	Agency Required to Respond Within	Check with Agency for Procedure	Legal Reference
Kansas	90 days, when practicable	✓	Kansas Statutes § 77-511 (adjudication) Constitution — Bill of Rights, § 3 (general)
Kentucky			Constitution — Sec. 1, para. 6 (general)
Louisiana	90 days		Louisiana Revised Statutes § 49-953(C) Constitution — Art. 1, § 9 (general)
Maine	60 days; if petition is submitted by 150 or more registered voters, the agency shall initiate appropriate rulemaking proceedings	✓	Maine Revised Statutes, tit. 5, § 8055 (rulemaking) Constitution — Art. I, § 15 (general)
Maryland	60 days		Maryland Code, State Gov't § 10-123 (rulemaking) Constitution — Declaration of Rights, Art. XIII (general)
Massachusetts	prescribed by agency regulation	✓	Massachusetts General Laws, ch. 30A, § 4 (rulemaking) Constitution — Part 1, Art. XIX (right to petition legislative body)
Michigan	90 days		Michigan Compiled Laws § 24.238 [M.S.A. 3.560(138)] (rulemaking); Constitution — Art. I, § 3 (general)
Minnesota	60 days		Minnesota Statutes § 14.09 (rulemaking)
Mississippi			Constitution — Art. III, § 11 (general)
Missouri		✓	Missouri Revised Statutes § 536.041 (rulemaking) Constitution — Art. I, § 9 (general)
Montana	60 days		Montana Code § 2-4-315 (rulemaking) Constitution — Art. III, § 6 (general)
Nebraska	60 days		Nebraska Revised Statutes § 84-907.08 (rulemaking) Constitution — Art. I, § 19 (general)
Nevada	30 days	✓	Nevada Revised Statutes § 233B.100 (rulemaking) Constitution — Art. I, § 10 (right to petition the legislature)
New Hampshire	30 days		New Hampshire Revised Statutes § 541-A:4 (rulemaking) Constitution — Bill of Rights, § 32 (right to petition the legislative body)
New Jersey	60 days	✓	New Jersey Revised Statutes § 52:14B-4(f) (rulemaking) Constitution — Art. I, § 18 (general)
New Mexico	30 days		New Mexico Statutes § 12-8-7 (rulemaking)
New York			Constitution — Art. I, § 9.1 (general)
North Carolina	30 days	✓	North Carolina General Statutes § 150B-20 (rulemaking) Constitution — Art. I, § 12 (right to petition the General Assembly)
North Dakota		✓	North Dakota Century Code § 28-32-16 (for reconsideration, amendment or repeal of a rule) Constitution — Art. I, § 5 (general)
Ohio			Constitution — Art. I, § 3 (right to petition the General Assembly)

State	Agency Required to Respond Within	Check with Agency for Procedure	Legal Reference
Oklahoma	A reasonable time; but if not within 30 days, then the petition is considered denied		Oklahoma Statutes § 75-305 (rulemaking) Constitution — § 11-3 (general)
Oregon	30 days		Oregon Revised Statutes § 183.390 (rulemaking) Constitution — Art. I, § 26 (right to petition the legislature)
Pennsylvania			Constitution — Art. I, § 20 (general)
Rhode Island	30 days		General Laws § 42-35-6 (rulemaking) Constitution— Art. I, § 21 (general)
South Carolina	30 days		South Carolina Code of Laws § 1-23-126 (rulemaking) Constitution — Art. I, § 2 (general)
South Dakota	30 days		South Dakota Codified Laws § 1-26-13 (rulemaking) Constitution — Art. 6, § 4 (general)
Tennessee	“...as promptly as is consistent with the orderly dispatch of business...”		Tennessee Code § 4–5-201 (rulemaking) Constitution — Art. I, § 23 (general)
Texas	60 days		Texas Government Code § 2001.021 (rulemaking) Constitution — Art. I, § 27 (general)
Utah	30 days	✓	Utah Code § 63-46a-12 (rulemaking) Constitution — Art. I, § 1 (general)
Vermont	30 days		Vermont Statutes tit. 3 § 806 (rulemaking) Constitution — Chap. 1, Art. 20 (right to petition the legislature)
Virginia	180 days		Virginia Code § 2.2-4007(A) (rulemaking) Constitution — Art. I, § 12 (general)
Washington	60 days		Washington Revised Code § 34.05.330 (rulemaking) Constitution — Art. I, § 4 (general)
West Virginia			West Virginia Code § 22-12-12 (rulemaking on issues arising under the Groundwater Protection Act) Constitution — Art. III, § 16 (general)
Wisconsin	Reasonable time		Wisconsin Statutes § 227.12 (rulemaking) Constitution — Art. I, § 4 (general)
Wyoming	As soon as practicable	✓	Wyoming Statutes § 16-3-106 (rulemaking) Constitution — Art. I, § 21 (general)
American Samoa			American Samoa Code § 4.1006 (rulemaking) Constitution — Art. I, § 1 (general)
Guam	60 days	✓	Guam Government Code § 9307 (rulemaking) 48 USC § 1421b and § 1423k (general)
Puerto Rico			Constitution — Art. II, § 4 (general)
Virgin Islands			48 USC § 1561 (general)

WORKSHEETS FOR WRITING THE PETITION

The worksheets outline tasks that will help to organize your research, writing, and decision making. By using the space provided to record your answers, you will have a convenient summary of your findings. The worksheets should be used with the Quick-Reference Checklist, pages 57–64. Suggested wording for parts of the petition may be found in the sample petition form, pages 79–80.

Researching the Problem

1. The following persons are being hurt by the current situation:

a.

Because

b.

Because

c.

Because

2. The persons listed in No. 1 are able/are unable to protect themselves because:

3. The following persons are benefiting from the current situation:

a.

Because

b.

Because

c.

Because

4. If left unattended, the problem is likely to (get worse/stay the same/get better) because:

Researching the Law

Note: Proper referencing is absolutely critical in legal research. Be sure that each statement you make in this part is followed by a code section or some other legal authority that supports the statement.

1. The law requires that:

a.

Code Section

b.

Code Section

c.

Code Section

d.

Code Section

e.

Code Section

2. The law requires these actions because:

a.

Code Section

b.

Code Section

c.

Code Section

d.

Code Section

e.

Code Section

3. The law prohibits:

a.

Code Section

b.

Code Section

c.

Code Section

d.

Code Section

4. The law prohibits these actions because:

a.

Code Section

b.

Code Section

c.

Code Section

d.

Code Section

e.

Code Section

5. The agencies responsible for implementing, overseeing, or enforcing the laws above are:

a.

Code Section

b.

Code Section

c.

Code Section

d.

Code Section

e.

Code Section

6. The powers given to the agencies listed in No. 5 are:

Agencies:

Powers:

Code Section or other legal reference:

Any special steps that the agency must take to use this power:

Investigating the Administrative Agency

1. Before the agency was formed, the problem was:

2. To solve the problem, the agency (list actions taken by the agency):

a.

b.

c.

d.

e.

3. These actions have (improved/worsened/not affected) the situation in that:
4. If we petition the agency, the decision will be made by:
5. He/she is accountable to:
6. His/her background is:
7. His/her views on the subject are:
8. He/she will respond to the following constituencies:
9. Taking Nos. 5–8 into account, I think he/she will be (sympathetic/neutral/indifferent/unsympathetic/hostile) to our petition because:

Developing Solutions

1. The agency could solve or alleviate the problem by:
 - a. prohibiting persons from:

- 1.
- 2.
- 3.
- 4.

- b. permitting persons to:

- 1.
- 2.
- 3.
- 4.

- c. requiring persons to:

- 1.
- 2.
- 3.
- 4.

- d. taking disciplinary action against:

1.

2.

3.

4.

e. performing the following services:

1.

2.

3.

4.

f. also taking the following actions:

1.

2.

3.

4.

Inviting Others to Support Your Efforts

1. The following persons/groups are likely to be interested in supporting our petition:

a.

Because

b.

Because

c.

Because

d.

Because

e.

Because

2. The person(s) who will be responsible for contacting the above persons/groups and asking for their support is:

a.

b.

c.

d.

e.

Filing the Petition

Note: The information collected on your worksheet is the basis of your petition. A petition should normally include all the sections included in the Quick-Reference Checklist, pages 57–64. Keep the checklist before you as you write. When you are done, review the checklist to ensure that no vital part has been left out of your petition. Suggested wording for parts of the petition may be found in the sample petition form, pages 79–80.

1. We will file the petition on:

2. The person who will be responsible for filing the petition is:

The News Media

1. We need to reach the following persons because they are affected by the problem and need to be aware of the issues and what can be done:
 - a.
 - b.
 - c.
 - d.
 - e.
 - f.
 - g.

2. We also need to reach the following persons because they are likely to be influential in the agency's decision:
 - a.
 - b.
 - c.
 - d.
 - e.

3. The media that will reach the persons listed above are:
 - a. Newspapers (daily, weekly, student, foreign language, neighborhood, etc.):
 - 1.
 - 2.
 - 3.
 - 4.
 - 5.
 - 6.
 - 7.
 - 8.
 - 9.
 - 10.

b. Radio stations (network, local, foreign language, university, public, etc.):

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

c. Television stations (network, local, cable, foreign language, public, etc.):

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

d. Magazines (weekly, monthly, specialty):

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

e. Wire services:

1. Associated Press
2. Local Wire Service
- 3.
- 4.
- 5.

f. Other:

- 1.
- 2.
- 3.
4. Rank the previous media outlets in order of importance/effectiveness.
5. Our media contact person will be:
6. The theme(s) we will emphasize to the media is (are):
 - a.
 - b.
 - c.
7. To explain the issue to reporters we will use (check one or more):
_____ News release
_____ News conference
_____ Other _____
8. We will issue our news release/hold our news conference
on _____
at _____

Note: The information collected on your worksheet is the basis of your news release or press conference. Consult the checklist on pages 60–61. Keep the checklist before you as you plan. Periodically, review the checklist to ensure that you have not forgotten anything.

Now That You Have Filed Your Petition

1. The person who is responsible for keeping in touch with the agency's officials is:
2. We will also monitor the agency's actions by:
3. The person who is responsible for keeping our supporters up to date on the progress of the petition is:

If the Agency Schedules the Matter for a Hearing: Find Out What Format the Hearing Will Take

1. The hearing arrangements are (satisfactory/unsatisfactory) because:

2. If the arrangements are unsatisfactory, the actions we should take are:

a.

b.

c.

d.

Prepare Your Testimony

1. In preparing our testimony we should:

a. Bolster the following points

1.

2.

3.

4.

5.

6.

b. State the changes needed in the facts, the law, or government policy:

1.

2.

3.

4.

5.

6.

c. Respond to opposing arguments as follows:

Opposing argument:

Our response:

Opposing argument:

Our response:

Opposing argument:

Our response:

Note: The information collected on your worksheets is the basis of your written testimony. At this point, consult the checklist on pages 62–63. Keep the checklist before you as you write your testimony. When you are done, review the checklist to ensure that nothing has been left out.

2. At the hearing, our witnesses will be:

Witness:

Testifying that:

3. Our media contact person will be:

4. The person responsible for taking notes and obtaining copies of testimony is:

Marshal Support

1. We will ask the following persons/groups to support our effort by testifying at or attending the hearing.

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.
- i.

2. The person(s) responsible for contacting the persons/groups listed above is (are):

Posthearing Comments

1. The arguments raised in opposition are:

- a.

b.

c.

d.

2. They are faulty because:

a.

b.

c.

d.

3. Recent developments adding to our case are:

a.

b.

c.

d.

4. Items we promised to supply the agency are:

a.

b.

c.

d.

If the Agency Grants the Petition

1. Before the agency's decision becomes effective (list actions that must occur before the decision is effective:

a.

b.

c.

d.

e.

2. We will issue a news release/hold a news conference

on _____

at _____ A.M./P.M.

3. This decision will solve/alleviate the original problem by:

4. To solve the entire problem, we should:

If the Agency Denies the Petition

1. We should/should not re-petition the agency because:

2. We should/should not pursue a court action against the agency because:

3. We should/should not go to the legislature, board of supervisors, city council for a bill, resolution, or hearings because:

4. We should/should not try to pass a ballot measure because:

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